

1 Alan K. Steinbrecher (SB# 79301)  
asteinbrecher@steinbrecherspan.com  
2 Douglas R. Painter (SB# 131043)  
dpainter@steinbrecherspan.com  
3 STEINBRECHER & SPAN LLP  
4 445 S. Figueroa St., Suite 2230  
Los Angeles, CA 90071  
T: (213) 891-1400  
5 F: (213) 891-1470

6 Attorneys for Plaintiff  
CYBER CITY TELESERVICES (PHILS), INC.

7 Michael A. Trauben (SB# 277557)  
mtrauben@singhtraubenlaw.com  
8 SINGH, SINGH, & TRAUBEN, LLP  
9 400 S. Beverly Dr., Suite 400  
Beverly Hills, CA 90212  
10 T: (310) 856-9705  
F: (888) 734-3555

11 Attorneys for Defendant  
12 BIOTAB NUTRACEUTICALS, INC.

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 CYBER CITY TELESERVICES  
17 (PHILS), INC.,

18 Plaintiff,  
19

20 v.

21 BIOTAB NUTRACEUTICALS,  
22 INC.,

23 Defendant.  
24

25 AND RELATED  
COUNTERCLAIMS

CASE NO. 12-CV-04847 MMM (AGRx)

[The Hon. Margaret M. Morrow]

26 **STIPULATED PROTECTIVE**  
27 **AGREEMENT AND ORDER**  
28

STIPULATED PROTECTIVE AGREEMENT AND ORDER

1           Upon the stipulation of all parties in this case for entry of a Protective Order  
2 and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court enters  
3 the following order:

4           1.     Scope of Order. This protective order ("Protective Order") shall  
5 govern the use of all documents, materials, testimony, and information produced  
6 during discovery in connection with the above-captioned action (the "Action"),  
7 whether furnished by a party or by a non-party, which have been designated, in  
8 good faith, by a party or by a non-party in accordance with this Protective Order as  
9 comprising or containing its or another's confidential or trade secret information.  
10 Such documents, materials, testimony, and information may include, without  
11 limitation, pleadings, deposition testimony, answers to interrogatories, documents  
12 and things produced, information obtained from inspection of premises, and  
13 exhibits for trial.

14           2.     Definitions. The following definitions shall apply to this Protective  
15 Order:

16           (a)    "AUTHORIZED PERSON" means a person described in  
17 subparagraph 6 of this Protective Order who is authorized to receive documents,  
18 materials, testimony, and information designated as CONFIDENTIAL  
19 INFORMATION.

20           (b)    "CONFIDENTIAL INFORMATION" means the documents,  
21 materials, testimony, and information described in subparagraph 3 of this Protective  
22 Order and designated in accordance with the terms and conditions of this Protective  
23 Order.

24           3.     Confidential Information. A party or non-party may designate as  
25 CONFIDENTIAL INFORMATION documents, materials, testimony, and  
26 information produced during discovery that the party or non-party in good faith  
27 believes contains or constitutes its or another's trade secrets or confidential  
28 research, development, financial or commercial information and that it in good faith

1 believes should be disclosed only to those persons authorized to have access to such  
2 documents, materials, testimony, and information under subparagraph 6 of this  
3 Protective Order.

4 4. Manner of Designation. Any designation made in accordance with this  
5 Protective Order also shall apply to all documents that reproduce, paraphrase,  
6 summarize or otherwise contain information from the documents, materials,  
7 testimony, and information so designated. Documents, materials, testimony, and  
8 information shall be designated as follows:

9 (a) Hard Copy and/or Imaged Documents. The producing party or non-  
10 party shall stamp or label:

11 (i) each page or appropriate portion of the document produced; and  
12 (ii) the front page of any group of documents produced with the  
13 term CONFIDENTIAL. In lieu of marking original documents, the producing  
14 party or non-party may mark only the actual copies that are produced or exchanged.

15 (b) Electronic Documents Produced In Native Form. To avoid altering  
16 documents produced in native form, the producing party or non-party shall stamp or  
17 label:

18 (i) the file name that graphically represents each produced  
19 document, which file name is viewable when navigating the electronic media  
20 containing the produced document;

21 (ii) the folder name (if any) that graphically represents each  
22 produced document or group of documents, which folder name is viewable when  
23 navigating the electronic media containing the produced document; and/or

24 (iii) the front of any CD, DVD, or other electronic media containing  
25 any group of produced documents with the term CONFIDENTIAL. In lieu of  
26 marking original documents, the producing party or non-party may mark only the  
27 actual copies that are produced or exchanged.

28 (c) Deposition Testimony. Deposition testimony taken in the Action shall

1 be treated as CONFIDENTIAL INFORMATION for a period of 20 days after  
2 delivery of the transcript of the deposition from the court reporter. Thereafter, only  
3 such deposition testimony as was affirmatively designated on the record at the  
4 deposition or subsequently is designated in writing by a party or non-party as  
5 containing CONFIDENTIAL INFORMATION shall be treated as such. The party  
6 or non-party subsequently designating deposition testimony as containing  
7 CONFIDENTIAL INFORMATION shall provide written notice to all other parties  
8 and applicable non-parties and to the court reporter of such designation by listing  
9 the page and line numbers of the transcript containing the testimony so designated.  
10 A deposition transcript containing information so designated shall not be filed with  
11 the Court unless those parts designated as containing CONFIDENTIAL  
12 INFORMATION have first been placed in a sealed envelope bearing the  
13 designation hereinafter provided for in paragraph 7.

14 (d) Non-written materials. For materials produced in non-written form,  
15 the party or non-party making the designation shall notify all parties and applicable  
16 non-parties in writing of the designation being made and describe in detail the  
17 specific materials that are being designated. In the case of non-written media, such  
18 as videotapes or computer diskettes, the producing party or non-party shall stamp or  
19 label the media produced with the term CONFIDENTIAL.

20 (e) Retroactive designation. The producing party or non-party may  
21 designate retroactively any produced documents or materials as containing  
22 CONFIDENTIAL INFORMATION by identifying with adequate particularity said  
23 documents or materials in a written transmission to the party on whom said  
24 materials were produced. The restrictions set forth herein on usage and disclosure,  
25 however, shall not be retroactive but shall accrue on the date of receipt of said  
26 written notices. In such a case, the parties shall comply with the procedures set  
27 forth in paragraph 13, below.

1  
2           5.     Restrictions on Use and Disclosure.

3           (a)     General Restrictions for the Use of All Confidential Information.

4     Except as agreed to in writing by the designating party or non-party, as the case  
5     may be, or except as otherwise provided by this Protective Order or order by the  
6     Court, any document, material, testimony or information designated as  
7     CONFIDENTIAL INFORMATION:

8                 (i)     may be received only by the AUTHORIZED PERSONS  
9     qualified under paragraph 6 of this Protective Order to receive it;

10                (ii)    shall be maintained in confidence by such AUTHORIZED  
11     PERSONS;

12                (iii)   shall be disclosed by such AUTHORIZED PERSONS only to  
13     other AUTHORIZED PERSONS entitled to receive it under the terms of this  
14     Protective Order and shall not be disclosed or made available by such  
15     AUTHORIZED PERSONS to anyone who is not authorized to receive such  
16     documents, materials, testimony, or information under the terms of this Protective  
17     Order; and

18                (iv)   shall be used by such AUTHORIZED PERSONS only for the  
19     purpose of this Action and for no other purpose whatsoever.

20           (b)     Deposition Transcripts. No copy of any transcript of any deposition  
21     taken by any party which is designated in part or in whole as CONFIDENTIAL  
22     INFORMATION shall be furnished by the court reporter to any person other than  
23     to outside counsel for the parties or the deponent or to the Court upon the Court's  
24     request.

25           (c)     Copies. There shall be no reproduction whatsoever of any documents,  
26     materials, testimony, or information designated as CONFIDENTIAL  
27     INFORMATION, except as necessary in connection with this Action. Copies,  
28     excerpts, or summaries of CONFIDENTIAL INFORMATION may be shown or

1 given only to those authorized to have access to such materials pursuant to this  
2 Protective Order, and this Protective Order shall apply to any such copies, excerpts,  
3 or summaries.

4 (d) Limitations on Restrictions:

5 (i) The restrictions and obligations set forth in this Protective Order  
6 shall not apply to documents, materials, testimony, or information which:

7 (A) are already in the public domain; or

8 (B) become part of the public domain other than as a result of  
9 disclosure, directly or indirectly, by a receiving party; or

10 (C) have come or shall come into the receiving party's  
11 legitimate possession from some source other than a party to this Action.

12 (ii) Nothing in this Protective Order shall restrict a party or its  
13 counsel from using or disclosing documents, materials, testimony, or information  
14 which they already possess or may acquire by proper means in the future  
15 independent of the formal discovery process in this Action. This Protective Order  
16 shall not prohibit a party's counsel from contacting any person merely because that  
17 person's identity is disclosed in documents, materials, testimony, or information  
18 that has been designated pursuant to the terms of this Protective Order. The  
19 restrictions and obligations set forth herein shall not be deemed to prohibit  
20 discussions with any person of any information if the person already has or obtains  
21 legitimate possession thereof.

22 (iii) No person may refuse to answer any question at a deposition on  
23 the sole ground that the question requires the person to disclose CONFIDENTIAL  
24 INFORMATION. If a question or an answer at a deposition will disclose  
25 CONFIDENTIAL INFORMATION, the deposition shall proceed upon the  
26 following basis: prior to interposing the question or answering the question, all  
27 persons present shall be advised of the terms and conditions of this Protective Order  
28 and, at the request of the designating party or non-party, all persons not authorized

1 to receive CONFIDENTIAL INFORMATION under this Protective Order shall  
2 leave the room during the time in which the CONFIDENTIAL INFORMATION is  
3 disclosed or discussed.

4 6. Authorized Persons. Access to CONFIDENTIAL INFORMATION  
5 shall be restricted to:

6 (a) the parties;

7 (b) inside lawyers for the parties;

8 (c) outside lawyers who are members of or employed by a law firm  
9 engaged to represent a party in this Action, together with employees of such law  
10 firms whose responsibilities require access to the documents, materials, testimony,  
11 or information so designated and outside vendors (e.g., reproduction services,  
12 scanning services, and data management services) retained by such counsel and  
13 who are assisting counsel in connection with the Action;

14 (d) the Court and any person employed by it working on this Action;

15 (e) court reporters (including stenographers and video technicians) taking  
16 a deposition in which CONFIDENTIAL INFORMATION will be disclosed;

17 (f) deponents, who shall have access to the confidential information only  
18 during preparation for and participation in the deposition;

19 (g) trial witnesses, who shall have access to the confidential information  
20 only during preparation for and participation in the trial in this Action;

21 (h) outside consultants or experts and their staff retained for any purpose  
22 of this Action; provided, however, that prior to disclosure to any outside expert or  
23 consultant or any of their staff, each such person who will receive access to the  
24 CONFIDENTIAL INFORMATION executes a Certification in the form attached as  
25 Exhibit A hereto;

26 (i) any mediator or third party jointly retained for purposes or attempting  
27 to settle the parties' dispute; provided, however, that prior to disclosure to any  
28 outside expert or consultant or any of their staff, each such person who will receive



1 access to the CONFIDENTIAL INFORMATION executes a Certification in the  
2 form attached as Exhibit A hereto; and

3 (j) persons designated by the Court in the interest of justice, upon such  
4 terms as the Court may deem proper.

5 7. Requirements to File Under Seal; Filing with the Court. If a party  
6 wishes to file with the Court a pleading, motion, memorandum, brief, deposition  
7 transcript, discovery request or response, exhibit, or other document that produces,  
8 paraphrases, summarizes, or otherwise contains any CONFIDENTIAL  
9 INFORMATION, the party filing the materials shall first seek written permission  
10 from the producing party. If said permission is declined, the filing party shall

11 *AGR* ~~(a) instruct the Clerk of Court in writing of the confidential nature of the~~  
12 ~~materials and request that the materials not be displayed or revealed except by order~~  
13 ~~of the Court; and~~

14 ~~(b) present the materials to be filed to the Clerk of the Court in sealed~~  
15 ~~envelopes prominently marked and labeled with the caption of the case and a~~  
16 ~~notation substantially similar to the following:~~

17 ~~"Contains Confidential Information Filed Under Seal Pursuant to the~~  
18 ~~Protective Order of [date] to be Opened Only by or as Directed by the Court."~~

19 ~~The Clerk is directed to maintain under seal all pleadings, documents,~~  
20 ~~transcripts of deposition testimony, affidavits, memoranda of law, and other papers~~  
21 ~~filed in this Action which have been designated by counsel, in whole or in part, as~~  
22 ~~CONFIDENTIAL INFORMATION.~~

23 8. Masked Documents. Copies of documents may be provided in masked  
24 form if the masking serves to redact: (a) information protected by the attorney-  
25 client privilege; (b) information protected by the work-product doctrine; (c)  
26 information not called for by the discovery requests served on the responding party  
27 or non-party; and/or (d) information the production of which has been objected to  
28 by the responding party or non-party. If documents are provided in masked form



1 by a party or non-party, that party or non-party shall also provide to the receiving  
2 party a log generally identifying the information masked and stating the purpose for  
3 the masking. The receiving party may take issue with the masking of the identified  
4 information by filing an appropriate motion with the Court. In connection with any  
5 such application for relief, the party that produced the masked document shall bear  
6 the initial burden of establishing that the masking is appropriate under applicable  
7 law.

8 9. Attorney-Client Privilege and Work Product. Nothing in this  
9 Protective Order shall require disclosure of materials a party or non-party contends  
10 are protected from disclosure by the attorney-client privilege or the work-product  
11 doctrine. This paragraph shall not, however, be construed to preclude any party  
12 from moving the Court for an order directing the disclosure of such materials.

13 10. Compliance with Third Party Judicial Process. In the event that any  
14 party or any other individual described in Paragraph 6 above is served with a  
15 subpoena or other judicial process demanding the production or disclosure of any  
16 CONFIDENTIAL INFORMATION, such party or individual shall, unless  
17 otherwise prohibited by law, (a) provide all parties or non-parties with a copy of  
18 such subpoena or other judicial process within 10 business days following receipt  
19 thereof and (b) cooperate with the parties or non-parties in any effort to protect any  
20 CONFIDENTIAL INFORMATION materials from production or disclosure.

21 11. No Admission Implied. The authorization contained herein for the  
22 parties to designate any documents, materials, testimony, or information produced  
23 in connection with this Action as CONFIDENTIAL INFORMATION is intended  
24 solely to facilitate discovery and preparation for trial of this Action, and such  
25 designation shall not be construed in any way as an admission or agreement by the  
26 other parties that such information constitutes or contains CONFIDENTIAL  
27 INFORMATION, trade secrets or other confidential research, development,  
28 technical, financial, or commercial information under applicable law.

1           12. Error in Designation or Production. The production of documents,  
2 materials, testimony, or information containing, or other disclosure of, trade secrets  
3 or other confidential research, development, technical, financial, or commercial  
4 information without a designation as CONFIDENTIAL INFORMATION at the  
5 time of production or disclosure shall not be deemed a waiver in whole or in part of  
6 a party's or non-party's claim of confidentiality or secrecy, either as to the specific  
7 information disclosed or as to any other information relating thereto or on the same  
8 or related subject matter. The production of documents or other information  
9 containing privileged information or attorney work product shall not be deemed a  
10 waiver in whole or in part of any party's or non-party's claim of privilege or work  
11 product protection, either as to the specific information disclosed or as to any other  
12 information relating thereto or on the same or related subject matter.

13           13. Right to Designate or Redesignate at Any Time. If information is  
14 produced in discovery that is subject to a claim of privilege, protection as trial-  
15 preparation material, or confidentiality, the party making the claim shall notify any  
16 party that received the information of the claim and the basis and, within 10 days of  
17 receipt of such notice, the notified party or parties (regardless of any disagreement  
18 regarding the proper designation of the document) shall (i) in the case of a  
19 privileged document, return the inadvertently disclosed document forthwith, as well  
20 as any and all copies; or (ii) in the case of a confidential, proprietary document,  
21 mark it and all copies, CONFIDENTIAL INFORMATION as designated. When  
22 information not initially designated as CONFIDENTIAL INFORMATION is so  
23 designated later in writing, each party shall make a reasonable effort to retrieve  
24 documents containing the later-designated information and otherwise ensure that  
25 persons to whom the information has been disclosed will treat it as  
26 CONFIDENTIAL INFORMATION. However, no sanctions shall be imposed  
27 upon a party for any disclosure of the later-designated information made prior to  
28 the party's receiving written notification of the later designation of the information

1 as such. In the event that the other party cannot comply with these requirements –  
2 because, for example, the inadvertently produced document has been given to a  
3 third party – the other party will provide the designating party or non-party with the  
4 name, address, and telephone number of such person(s) as well as the date of and  
5 reason for the transmission of the document.

6 14. Right to Challenge Designations. Any party may contest the  
7 designation of any information as privileged or as CONFIDENTIAL  
8 INFORMATION. A failure to challenge a claim of privilege or confidentiality  
9 shall not constitute agreement that such claim is valid and shall not prejudice any  
10 party or person. If any party disagrees with any designation of any information as  
11 privileged or as CONFIDENTIAL INFORMATION, it shall notify counsel for the  
12 designating party or non-party, and they shall attempt to resolve the dispute. If the  
13 dispute is not resolved, the party contesting the designation shall place the dispute  
14 before the Court, and the information shall continue to be kept as privileged or as  
15 CONFIDENTIAL INFORMATION unless and until the Court rules otherwise. In  
16 connection with any such application for relief, the party asserting privilege or  
17 confidentiality shall bear the initial burden of establishing that the asserted  
18 designation is appropriate under applicable law.

19 15. Right to Seek Additional Relief. Nothing herein shall prevent a party  
20 or non-party from petitioning the Court for additional relief for protection of  
21 confidential materials, should such additional relief be deemed necessary in such  
22 party's or non-party's sole discretion.

23 16. Other Judicial Proceeding. By entering this Protective Order and  
24 limiting the disclosure of information in this case, this Court does not intend to  
25 preclude another court from finding that information may be relevant and subject to  
26 disclosure in another case. Any person or party subject to this Order that may be  
27 subject to a motion to disclose another party's or non-party's information  
28 designated as CONFIDENTIAL INFORMATION pursuant to this Order, shall

1 unless otherwise prohibited by law promptly notify that party or non-party of the  
2 motion so that it may have an opportunity to appear and be heard on whether that  
3 information should be disclosed.

4 17. Conclusion of Action. Within 60 days after the conclusion of this  
5 Action by settlement, judgment without appeal, or issuance of a mandate by an  
6 appellate court, counsel of record for each party shall return to the applicable  
7 producing party or non-party, or certify to them in writing that it has destroyed, all  
8 CONFIDENTIAL INFORMATION received on behalf of such party or non-party  
9 during the course of this Action, including all copies of discovery and all excerpts  
10 or summaries thereof or any other materials derived therefrom or referring thereto,  
11 except that a single copy of all pleadings containing such information, deposition  
12 transcripts and accompanying exhibits, and any documents properly classified as  
13 work product may be retained.

14 18. Retention of Jurisdiction. This Protective Order shall survive the final  
15 termination of this Action. The Court shall retain jurisdiction to resolve any dispute  
16 concerning the dissemination or use of information disclosed hereunder.

17 19. Sanctions. Violations of this Protective Order shall be subject to the  
18 contempt powers of the Court and such sanctions as the Court may deem  
19 appropriate.

20 20. Modification. The terms of this Protective Order are subject to  
21 modification, extension, or limitation if agreed to by all of the parties in writing, or  
22 if ordered by the Court. Nothing contained in this Protective Order shall prevent a  
23 party at any time from seeking to modify or obtain relief from particular terms or  
24 conditions of this Protective Order by application to the Court on notice to the other  
25 parties hereto for good cause.

26 //

27 //

28

1 **AGREED AND STIPULATED:**

2  
3 Dated: April 5, 2013

Alan K. Steinbrecher  
Douglas R. Painter  
STEINBRECHER & SPAN LLP

4  
5  
6 By: /s/ Douglas R. Painter  
7 Douglas R. Painter

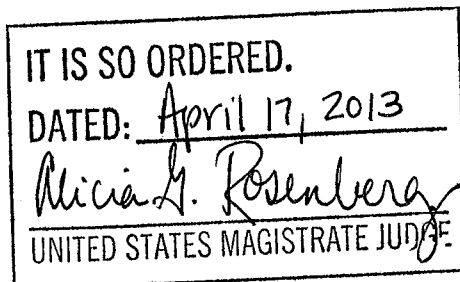
8 Attorneys for Plaintiff  
9 CYBER CITY TELESERVICES (PHILS), INC.

10 Dated: April 5, 2013

Michael A. Trauben  
SINGH, SINGH & TRAUBEN, LLP

11  
12  
13  
14 By: /s/ Michael A. Trauben  
15 Michael A. Trauben

16 Attorneys for Defendant  
17 BIOTAB NUTRACEUTICALS, INC.



**EXHIBIT A**

I, \_\_\_\_\_, acknowledge and declare as follows:

1. My address is:

\_\_\_\_\_.

2. I have received a copy of the Stipulated Protective Order in this Action; I have carefully read and understand the provisions of the Stipulated Protective Order; and I agree to comply with, and to be bound by, its terms.

3. I will hold in confidence, not disclose to anyone not qualified under the Stipulated Protective Order, and will use only for purposes of this Action, materials marked or designated as CONFIDENTIAL INFORMATION that are disclosed to me.

4. I immediately will return all materials marked or designated as CONFIDENTIAL INFORMATION that may come into my possession, and documents or things which I may prepare relating thereto to counsel for the party producing such materials upon receipt of a request to do so at the conclusion of the Action.

5. I hereby irrevocably consent to the jurisdiction of the United States District Court for the Central District of California for the purpose of any proceeding to enforce or secure compliance with the terms of this Stipulated Protective Order, or to punish the breach of any of the terms of this Stipulated Protective Order. I understand that I may be found in contempt of court if I violate any term of the Stipulated Protective Order of this Agreement.

6. I understand and agree that my obligations under this Agreement and the Stipulated Protective Order will survive and continue beyond the termination of the Action.

1 I declare under penalty of perjury that the foregoing is true and correct.

2

3

4

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

5

6

\_\_\_\_\_  
Printed Name

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28